

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KEVIN OMAR MATÍAS-ROSELLÓ,
INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED

Plaintiffs

v.

EPOCH LLC; FOT INVESTMENTS LLC D/B/A
DOMINO'S PIZZA; CLUTCH CONSULTING, LLC

Defendants

CIVIL NO.: 3:19-cv-01307-SCC-BJM

FAIR LABOR STANDARDS ACT

JURY TRIAL DEMANDED

**EPOCH LLC'S AND FOT INVESTMENTS LLC'S STATEMENT OF UNCONTESTED
MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

COME NOW Defendants EPOCH LLC and FOT INVESTMENTS LLC, through the undersigned attorneys and in compliance with Local Rule 56(b), present their Separate Supporting Statements of Uncontested Material Facts:

1. Epoch LLC is the master franchisee of Domino's Pizza in Puerto Rico. (**EXHIBIT 1 – Epoch LLC's Answers to Plaintiff's First Set of Interrogatories**, Answer to Interrogatory No. 3 at page 3).
2. Epoch LLC does not have any employees. (**EXHIBIT 1 – Epoch LLC's Answers to Plaintiff's First Set of Interrogatories**, Answer to Interrogatory No. 6 at page 4; **EXHIBIT 2 – Epoch LLC's Answers and/or Objections to Request for Admissions**, Answer to Request No. 1 at page 2).

3. Epoch LLC did not employ Mr. Matías-Roselló. (**EXHIBIT 1** – *Epoch LLC's Answers to Plaintiff's First Set of Interrogatories*, Answer to Interrogatory No. 7 at page 4).

4. FOT Investments LLC is a sub-franchisee of Domino's Pizza since February 27, 2017. (**EXHIBIT 3** - *FOT Investments LLC's Answers to Plaintiff's First Set of Interrogatories*, Answer to Interrogatory No. 5 at page 3).

5. Mr. Matías-Roselló was hired by FOT Investments LLC on February 15, 2017 and started working on February 27, 2017 as a delivery driver. (**EXHIBIT 4** - *Employment Contract as Delivery Driver for FOT Investments LLC*; **EXHIBIT 5** - *FOT Investments LLC's Answers and/or Objections to Request for Admissions*, Answer No. 1 at page 2).

6. Mr. Matías-Rosello was a part-time employee. (**EXHIBIT 4** - *Employment Contract as Delivery Driver for FOT Investments LLC*).

7. Mr. Matías-Roselló was stationed in the Mayaguez store as his principal job post. (**EXHIBIT 6** – *Deposition* at page 37 lines 12-25; page 38 line 1).

8. He was also casually stationed in the Ponce and Yauco stores. (**EXHIBIT 6** – *Deposition* at page 37 lines 12-25; page 38 lines 1).

9. Mr. Matías-Roselló was paid \$7.25 per hour, plus \$1 per delivery. (**EXHIBIT 6** – *Deposition* at page 55 lines 1-6; page 64 lines 10-17; page 65 lines 12-20). See also Docket No. 11, p. 3, answer to paragraph 16 of the Complaint.

10. Mr. Matías-Roselló did not have to report the tips received from the customers to FOT Investments LLC. (**EXHIBIT 6** – *Deposition* at page 83 lines 11-15).

11. FOT Investments LLC did not retain any tips from Mr. Matías-Roselló and did not take a tip-credit against his hourly rate. (**EXHIBIT 6** – *Deposition* at page 83 lines 11-20).

12. Mr. Matías-Roselló did not share his tips with any other drivers or employees from FOT Investments LLC. (**EXHIBIT 6** – *Deposition* at page 83 lines 11-20).

13. Mr. Matías-Roselló received tips from the clients; however, he does not have a record of how many tips he received per week. (**EXHIBIT 6** – *Deposition* at page 72 lines 5-17).

14. From the period of March 10, 2017 to December 29, 2017, Mr. Matías-Roselló was paid a total of \$8,858.35 for 1,159.10 hours worked at the rate of \$7.25 per hour, plus 3.09 hours' Time and Half, 48.10 hours for Meal Penalty, and 10 Vacation Hours. (**EXHIBIT 7** – *Mr. Matías-Roselló's Payroll Register for 2017* at page 12).

15. From the period of January 5, 2018 to December 28, 2018, Mr. Matías-Roselló was paid a total of \$11,768.62 for 1,439.56 hours worked at the rate of \$7.25 per hour, plus 12.76 hours' Time and Half, 51.79 hours for Meal Penalty, 24 Vacation Hours, 6 Sick Hours, and a Bonus of \$600.00. (**EXHIBIT 8** – *Mr. Matías-Roselló's Payroll Register for 2018* at page 16).

16. From the period of January 4, 2019 to October 11, 2019, Mr. Matías-Roselló was paid a total of \$5,695.68 for 719.94 hours worked at the rate of \$7.25 per hour, plus 1.73 hours' Time and Half, 5.83 hours for Meal Penalty, and 57.25 Vacation Hours. (**EXHIBIT 9** – *Mr. Matías-Roselló's Payroll Register for 2019* at page 11).

17. Mr. Matías-Rosello's was paid a total of \$3,187.00 for 3,126 deliveries made at the Mayaguez Store. (**EXHIBIT 10** – *Consolidated Summary for 11674 Location (Mayaguez Store)*)).

18. Mr. Matías-Rosello's was paid a total of \$93.00 for 74 deliveries made at the Ponce Store. (**EXHIBIT 11** – *Consolidated Summary for 11677 Location (Ponce Store)*)).

19. Mr. Matías-Rosello's was paid a total of \$173.00 for 170 deliveries made at the Yauco Store. (**EXHIBIT 12** –*Consolidated Summary for 11694 Location (Yauco Store)*).

20. Mr. Matías-Roselló resigned from his employment at FOT Investments LLC on October 6, 2019. (**EXHIBIT 13** –*Letter of Resignation dated October 6, 2019*).

21. Mr. Matías-Roselló does not recall the allegations of the Complaint. (**EXHIBIT 6** –*Deposition* at page 12 lines 19-21).

22. Mr. Matías-Roselló has not discussed any of the allegations of the Complaint with any other purported class members. (**EXHIBIT 6** – *Deposition* at page 41 lines 17-21, page 42 lines 5-13)

23. Mr. Matías-Roselló does not have any record of his car expenses while making deliveries, including tires, brakes, and gas. (**EXHIBIT 6** –*Deposition* at page 61 lines 12; page 62 lines 2.; page lines 8-11).

24. Mr. Matías-Roselló does not have any records of the distances that he traveled while making the deliveries. (**EXHIBIT 6** –*Deposition* at page 66 lines 19-25; page 67 lines 1-8).

25. Mr. Matías-Roselló did not consult or hire an expert to calculate his actual vehicle expenses in support of his claims. (**EXHIBIT 6** – *Deposition* page 87 lines 2-5).

WEREFORE, EPOCH LLC and FOT INVESTMENTS LLC respectfully request that the foregoing facts be deemed uncontested and that summary judgment be entered in their favor.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of May, 2021.

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LIST OF EXHIBITS

1. **EXHIBIT 1** – EPOCH LLC's Answers to Plaintiff's First Set of Interrogatories
2. **EXHIBIT 2** – EPOCH LLC's Answers and/or Objections to Request for Admissions
3. **EXHIBIT 3** – FOT Investments LLC's Answers to Plaintiff's First Set of Interrogatories
4. **EXHIBIT 4** – Kevin Matías-Roselló's Employment Contract as Delivery Driver for FOT Investments LLC
5. **EXHIBIT 5** – FOT Investments LLC's Answers and/or Objections to Request for Admissions
6. **EXHIBIT 6** – Kevin Matías-Roselló's Deposition taken on March 17, 2021
7. **EXHIBIT 7** – Kevin Matías-Roselló's Payroll Register for 2017
8. **EXHIBIT 8** – Kevin Matías-Roselló's Payroll Register for 2018
9. **EXHIBIT 9** – Kevin Matías-Roselló's Payroll Register for 2019
10. **EXHIBIT 10** – Consolidated Summary for 11674 Location (Mayagüez Store)

11. **EXHIBIT 11** – Consolidated Summary for 11677 Location (Ponce Store)
12. **EXHIBIT 12** – Consolidated Summary for 11694 Location (Yauco Store)
13. **EXHIBIT 13** – Kevin Matías-Roselló's Letter of Resignation dated on October 6, 2019